CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence (along with any paper referred to as being attached or enclosed) is being submitted *via* the USPTO EFS Filing System on the date shown below to Mail Stop Appeal Briefs - Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450

Date: 2-14-2006 /David W. Grillo/
David W. Grillo

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of:

Applicant(s): Gregory J. Mesaros

Serial No: 10/650,635

Filing Date: August 28, 2003

Examiner: William J. Allen

Art Unit: 3625

Title: MULTIPLE SUPPLIER VOLUME PRICING SYSTEM AND METHOD

Mail Stop Appeal Briefs - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

APPEAL BRIEF

Dear Sir:

Appellant's representative submits this brief in connection with an appeal of the above-identified patent application. A credit card payment form is filed concurrently herewith in connection with all fees due regarding this appeal brief. In the event any additional fees may be due and/or are not covered by the credit card, the Commissioner is authorized to charge such fees to Deposit Account No. 50-1063 [GEDP111USA].

I. Real Party in Interest (37 C.F.R. §41.37(c)(1)(i))

The real party in interest in the present appeal is eWinWin, Inc., the assignee of the present application.

II. Related Appeals and Interferences (37 C.F.R. §41.37(c)(1)(ii))

Appellant, appellant's legal representative, and/or the assignee of the present application are not aware of any appeals or interferences which may be related to, will directly affect, or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. Status of Claims (37 C.F.R. §41.37(c)(1)(iii))

Claims 1, 2, 4-20 and 22-42 stand rejected by the Examiner. The rejection of claims 1, 2, 4-20 and 34-42 is being appealed. Claims 3 and 21 have been canceled, and claims 22-33 have been withdrawn

IV. Status of Amendments (37 C.F.R. §41.37(c)(1)(iv))

Claim 1 was amended after the Final Office Action (mailed September 13, 2006) to correct a minor informality. The amendment was entered by the Examiner.

V. Summary of Claimed Subject Matter (37 C.F.R. §41.37(c)(1)(v))

A. Independent Claim 1

Independent claim 1 refers to an electronic multiple supplier system for transacting business that can include a central connection component that provides a virtual forum to facilitate electronic communication between buyers and suppliers (*see e.g.*, page 5, lines 3-17) and at least one remote computer connected to the central connection component *via* a network, where at least one buyer employs the at least one computer to request, retrieve, and accept online bids that include a price curve for a product from bidding suppliers, the price curve specifying a unit price in tiers based on the total volume purchased, (*see e.g.*, page 17, lines 3-30), and wherein the virtual forum displays in real time current low bids at each tier as the bids are retrieved (*see e.g.*, page 17, lines 31-32).

B. Independent Claim 8

Independent claim 8 refers to a method for conducting electronic commerce including, requesting an online bid from a plurality of suppliers (*see e.g.*, page 17, lines 3-8); receiving bids from bidding suppliers, each bid specifies a price for which the associated bidding supplier will sell a product at particular price points varying as a function of a quantity of the product (*see e.g.*, page 17, lines 10-14); displaying in real time a lowest price bid at a respective price point as bids are received (*see e.g.*, page 17, lines 31-32).

C. Dependent Claim 12

Dependent claim 12 recites a buyer specifies the period of time in which bids must be received. (*See e.g.*, page 17, lines 29-30).

VI. Grounds of Rejection to be Reviewed (37 C.F.R. §41.37(c)(1)(vi))

A. Whether claims 1, 2, 5, 6, 8, 11, 13, 34-37, 40, and 41 are unpatentable under 35 U.S.C. §103(a) over Irribarren, *et al.* (US Application No. 2002/0065769, hereinafter referred to as "Irribarren") in view of Eso, *et al.* (US Application No. 2003/0028473, hereinafter referred to as "Eso").

B. Whether claims 4 and 9 are unpatentable under 35 U.S.C. §103(a) over Irribarren in view of Eso, and in further view of Abeshouse, *et al.* (US 2002/0099643, hereinafter referred to as "Abeshouse").

C. Whether claim 7 is unpatentable under 35 U.S.C. §103(a) over Irribarren in view of Eso and further in view of Muftic (US 5,850,442).

D. Whether claims 10 and 42 are unpatentable under 35 U.S.C. §103(a) over Irribarren in view of Eso and further in view of Gellman (US Application No. 2002/0035536).

E. Whether claim 12 is unpatentable under 35 U.S.C. §103(a) over Irribarren in view of Eso and further in view of Lee, *et al.* (US Application No. 2002/0065762, hereinafter referred to as "Lee").

F. Whether claim 14 is unpatentable under 35 U.S.C. §103(a) over Irribarren in view of Eso and further in view of Hao, *et al.* (US Application No. 2002/0065762, hereinafter referred to as "Hao").

G. Whether claims 15 and 16 are unpatentable under 35 U.S.C. §103(a) over Irribarren in view of Eso and further in view of Ginsberg (US Application No. 2003/0055774).

H. Whether claim 17 is unpatentable under 35 U.S.C. §103(a) over Irribarren in view of Eso and in view of Ginsberg, and further in view of PTO 892 reference W (hereinafter referred to as "892W").

I. Whether claims 18 and 19 are unpatentable under 35 U.S.C. §103(a) over Irribarren in view of Eso and in view of Ginsberg and in view of 892W, and in further view of PTO 892 reference U (hereinafter referred to as "892U").

J. Whether claim 20 is unpatentable under 35 U.S.C. §103(a) over Irribarren in view of Eso and in view of Ginsberg and in view of 892W, and in further view of PTO 892 reference V (hereinafter referred to as "892V").

K. Whether claims 38 and 39 are unpatentable under 35 U.S.C. §103(a) over Irribarren in view of Eso and in further view of Cao, *et al.* (US Application No. 2003/0195832, hereinafter referred to as "Cao").

VII. Argument (37 C.F.R. §41.37(c)(1)(vii))

A. Rejection of Claims 1, 2, 5, 6, 8, 11, 13, 34-47, 40, and 41 Under 35 U.S.C. §103(a)

Claims 1, 2, 5, 6, 8, 11, 13, 34-47, 40, and 41 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Irribarren in view of Eso. Reversal of this rejection is respectfully requested for at least the following reasons. Irribarren is non-analogous art, and therefore is not a proper reference under 35 U.S.C. §103(a). In addition, the combination of Irribarren with Eso in the manner suggested by the Examiner lacks proper suggestion and/or motivation to combine, and further does not yield a reasonable expectation success. Still further, the combination would be inoperative and, therefore, fails to constitute a proper combination to serve for *prima facie* obviousness.

> Whether something legally within the prior art is analogous is a fact question. Two criteria are relevant in determining whether prior art is analogous: (1) ***whether the art is from the same field of endeavor***, regardless of the problem addressed, and (2) if the art is not within the same field of endeavor, ***whether it is still reasonably pertinent to the particular problem to be solved.*** *Wang Lab. v. Toshiba Corp.*, 993 F.2d 858, 864 (Fed. Cir. 1992) (held that reference to a SIMM memory module for an industrial controller was not necessarily in the same field of endeavor as a DRAM memory module merely because both relate to memories) (emphasis added).

The claimed subject matter relates generally to multiple supplier volume pricing. More specifically, a virtual forum can be provided that facilitates electronic communication between buyers and suppliers. For example, a buyer can request bids for product from suppliers of that product, wherein each of the bidding suppliers (*e.g.*, those that respond to the request for bids) can submit a price curve for the product. The price curve can include a unit price for each tier based upon the quantity/volume. Accordingly, the virtual forum can display various information associated with the bids and/or price curves in real time. (*See e.g.*, pg. 17, ll. 3-31). In particular, independent claim 1 (and similarly independent claim 8) recites, "at least one buyer employs the at least one computer to request, retrieve, and accept online bids that include a price curve for a product from bidding suppliers, ***the price curve specifying a unit price in tiers based***

on the total volume purchased. " As the Examiner concedes, Irribarren does not teach or suggest these distinguishing features. However, the Examiner contends these features are taught by Eso, yet, Irribarren is non-analogous art and is not reasonably pertinent to the issues of the claimed subject matter.

Irribarren relates to meeting ***unmet demand*** for completed auctions. (*See* Abstract). In particular, Irribarren notes that prior auction systems do not distinguish between small price disparities and larger ones. That is, if a buyer bids $999 for an item while the seller's price is $1000, then the auction will be unsuccessful, even though a mere $1 separated the two. In essence, the disparity might as well have been $1000 rather than a single dollar as far as prior systems are concerned. (*See* paragraphs 0010, 0051). Thus, relying upon the assumption that face-to-face negotiations would not fail with small price disparities (*see* paragraph 0051), Irribarren generates a new bidding cycle for unmet demand when the price difference is within a pre-agreed range. (*See* paragraph 0052). For example, when an auction fails to generate a completed transaction for a product, and further, where the bid price and the ask price are within a pre-agreed range (*e.g.*, the buyer and seller are close on price points and they both have agreed in advance upon the overlapping range), then Irribarren generates a new bidding cycle to address this unmet demand.

Accordingly, although both Irribarren and the claimed subject matter are both directed to electronic auctions, they are not necessarily in the same field of endeavor as the instant claims, just as a SIMM memory module and a DRAM memory module are not necessarily in the same field of endeavor merely because both relate to computer memories and more specifically RAM computer memories with the primary distinction being simply a specification standard. (*See Wang Lab.*, *supra*). In particular, Irribarren is directed to a very narrow field of resolving ***unmet demand***. More particularly, Irribarren only applies to a previously unsuccessful e-commerce auction wherein the price difference is relatively small, because unless the prior auction has first failed and further failed only by a relatively small amount, there is no *unmet demand* as defined by the reference.

Deigning to meet unmet demand, as provided for in Irribarren, is not reasonably pertinent to the particular problem of a virtual forum that "displays in real time current low bids at each tier as the bids are retrieved" while "specifying a unit price in tiers based upon the total volume purchased." In fact, Irribarren itself notes that individual buyers and sellers that bid for products

is "a completely different paradigm" from bids that are based upon aggregation (*see* paragraph 0008), which serves to underscore the non-analogous nature of Irribarren *vis-à-vis* the claimed subject matter. For example, while single bid demand topologies (or systems or architectures) are a completely different paradigm than demand aggregation topologies, demand aggregation topologies are, similarly, a completely different paradigm than tier-based aggregation topologies. Irribarren is void of any teaching relating to price tiers and/or price tiers based upon volume, and is therefore non-analogous art.

The Examiner argues at page 3 of the Advisory action (mailed December 26, 2006) that Irribarren discloses, "it is understood that the invention is applicable to any bidding and/or auction type market system" in order to suggest Irribarren is analogous art. However, such a feature is not enabled by Irribarren, but rather only named or described. Merely naming or describing such a feature is insufficient to provide an enabling disclosure (*see Elan Pharm., Inc. v. Mayo Found. For Med. Educ. & Research*, 346 F.3d 1051, 1054, 68 USPQ2d 1373, 1376 (Fed. Cir. 2003)). As just one example, Irribarren operates to identify unmet demand based upon one dimension alone: price. A tier-based aggregation topology introduces a second dimension and operates in at least two dimensions such as price and volume. Irribarren is silent as to how the teachings therein could be applied to a bidding and/or auction type market system that employs tier-based aggregation, since demand is a function of both price and volume, not merely price alone. For instance, demand can be met at a given price up to 1,000 units sold, and even though a lower price can be displayed for successive tiers up to say, 1,000,000 units, the lower price is not actually available unless the volume reaches the specified amount to validate the lower price. As a second example, Irribarren leverages "small" price differences for the disclosed market types, but in tier-based topologies, this has little or no meaning, as the successive tiers inherently provide for a willingness to lower prices to meet demand (which is what the pre-specified price range is utilized for in Irribarren).

For at least the foregoing reasons, it is readily apparent that Irribarren is (1) not from the same field of endeavor, and (2) not reasonably pertinent to the particular problem solved. Hence, Irribarren is an improper reference under 35 U.S.C. §103(a) and Eso does not teach or suggest all the claimed features. Accordingly, this rejection of independent claims 1 and 8 as well as all associated dependent claims should be reversed.

Moreover, even if Irribarren does constitute analogous art, the combination of the two references is improper because there is not a reasonable expectation of success nor does either reference indicate a reasonable expectation of success.

> To reject claims in an application under §103, an examiner must establish a *prima facie* case of obviousness. A *prima facie* case of obviousness is established by a showing of three basic criteria. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *See* MPEP §706.02(j). The teaching or suggestion to make the claimed combination ***and the reasonable expectation of success must <u>both</u> be found in the prior art and not based on applicant's disclosure***. *See In re Vaeck,* 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991) (emphasis added).

Eso relates to mathematically solving a buyer's ***decision problem*** by evaluating and approximating bids from suppliers. (*See* paragraphs 0008 and 0009). That is, when a buyers wants to procure a quantity of ***heterogeneous products***, Eso can determine how much of each commodity to buy from each supplier so that the buyer's demand is satisfied in the most economical way possible. (*See* paragraph 0028). While also being directed to the field of e-commerce, Eso is very limited in its application, since it only applies to situations in which the buyer desires to purchase multiple commodities or products (*e.g.*, heterogeneous products), a subset of each is offered by multiple suppliers at respective prices. (*See* paragraphs 0026 and 0027). Otherwise, there is no ***decision problem*** (to which Eso is expressly directed), because unless these rare prerequisites are met (namely heterogeneous products from multiple suppliers), the buyer need only perform a strict price comparison between suppliers in order to know which is most economical, which does not require any sort of mathematical formulation.

In contrast, recall that the object of Irribarren is to provide for unmet demand, which occurs only after a prior bidding cycle in which neither the buyer nor the supplier successfully completed a buy/sell transaction, but their respective price points (which failed) were close enough to each other. Hence, Irribarren is directed to renegotiating failed prices, while Eso requires precise price points known in advance (*e.g.*, before the auction is completed, not after it

fails) in order to approximate the most economical solution for the buyer. The mathematical algorithm supplied by Eso is not equipped to handle a new, undisclosed variable such as introducing a different price after an auction has failed, as is required by Irribarren.

On the other hand, Irribarren is not equipped to properly detect unmet demand under the circumstances described in Eso. For example, Irribarren contemplates detecting relatively small price differences between the buyer and seller as it relates to a single product, but in no way contemplates volume buying at different price tiers (*e.g.*, tier-based aggregation topologies), let alone that for heterogeneous products. As a result, while the exemplary illustration at paragraph 0051 of $1 is employed to illustrate a very *small* price disparity, in the tier-based aggregation side of e-commerce (*e.g.*, Eso), this can be a very *large* price disparity. Hence, the effectiveness of Irribarren to detect unmet demand would be virtually useless since all the suppliers are likely to be very close in terms of pricing anyway and overlapping ranges that signal unmet demand in Irribarren are not actionable in Eso's tier-based system.

Moreover, since Eso has no utility other than for heterogeneous products offered by multiple suppliers, the situation could exist that a losing supplier actually had a ***lower*** price for one product than did the supplier who won the bid. That is, the model described in Eso could determine that although a first supplier has a higher price per unit for item A than a second supplier, that difference is more than made up by a discount for item B. Consequently, Eso recommends the first supplier over the second supplier, and Irribarren is left with the situation that the supplier's asking price is actually lower than the bidder's biding price. Irribarren clearly does not contemplate this situation, even though it is more than likely to occur under Eso.

In addition, and perhaps most pointedly, Irribarren is expressly aimed at auctions where each vendor offers one or more products ***of a single product type*** (*see* Irribarren paragraph 0054) whereas Eso's algorithm has no meaning or value unless each vendor offers a plurality of ***heterogeneous product types***. Accordingly, these two references are both inherently and expressly incongruous and cannot thus serve as predicates for a *prima facie* case of obviousness.

> ***If references taken in combination would produce a "seemingly inoperative device," we have held that such references teach away from the combination and thus cannot serve as predicates for a prima facie case of obviousness.*** *In re Sponnoble,* 405 F.2d 578, 587, 160 USPQ 237, 244, 56 C.C.P.A. 823 (1969) (references teach away from combination if combination produces seemingly inoperative device); *see also In re Gordon,* 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984) (inoperable modification teaches away). *McGinley v. Franklin Sports Inc.*, 262 F.3d 1339, 60 USPQ2d 1001, 1010 (Fed. Cir. 2001) (emphasis added).

To summarize: 1) Eso applies the decision problem only when demand is already met to find an optimal solution from among the *winning bids*, whereas Irribarren generates a new bidding cycle only when there are ***no winning bids*** and thus demand is unmet; and 2) Eso is directed to bid/offers for heterogeneous product types whereas Irribarren simply does not contemplate such a situation, and discloses that bid/offers are applicable for a single product type. The application of the teachings of these references is mutually exclusive. Accordingly, the references create an inoperable combination, which is a *per se* demonstration of lack of prima facie obviousness. *In re Dow Chemical Co*., 837 F.2d 469, 5 USPQ2d 1529 (Fed. Cir. 1988). In addition, neither reference suggests a reasonable expectation of success for the combination, nor has the Examiner indicated such.

Finally, even if: (1) Irribarren is deemed to be analogous art; (2) a reasonable expectation of success for combining the two can be found in at least one of the references; and (3) the combination would not produce seemingly inoperative device, then the combination is still insufficient to render the claimed subject matter *prima facie* obvious. In particular, as the Examiner indicates at page 4 of the Final Office Action (mailed September 13, 2006), Irribarren fails to teach or suggest ***the price curve specifying a unit price in tiers based on the total volume purchased***. Consequently, the Examiner relies upon Eso to disclose this aspect. Assuming *arguendo* that Eso does teach the price curve specifying a unit price in tiers based on the total volume purchased, the Court of Appeals for the Federal Circuit has consistently held that

> ...'***virtually all [inventions] are combinations of old elements.***' Therefore an examiner may often find every element of a claimed invention in the prior art. ***If identification of each claimed element in the prior art were sufficient to negate patentability, very few patents would ever issue.*** Furthermore, rejecting patents solely by finding prior art corollaries for the claimed elements would permit an examiner to use the claimed invention itself as a blueprint for piecing together elements in the prior art to defeat the patentability of the claimed invention. ***Such an approach would be 'an illogical and inappropriate process by which to determine patentability.'*** *In re Rouffet*, 149 F.3d 1350, 1357, 47 U.S.P.Q.2d 1453 (Fed. Cir. 1998) (*citations omitted*). *Proof that the separate elements exist in the prior art* ***is inadequate to establish obviousness***. *Arkie Lures Inc. v. Gene Larew Tackle Inc.*, 43 USPQ2d 1294, 1297 (Fed. Cir. 1997).

Accordingly, the CAFC requires the Examiner to show reasons that the skilled artisan, confronted with the same problems as the inventor and *with no knowledge of the claimed invention*, would select the elements from the cited prior art references for combination in the manner claimed. *See In re Rouffet, supra* at 1357. Here, in total, the Examiner has relied upon no fewer than **twelve** separate references in order to locate various distinguishing features of the subject claims. Applicant's representative respectfully submits these twelve references were chosen not based upon suggestions from the references themselves (as required for a *prima facie* case for obviousness), but rather by using applicant's claims as a blueprint and selecting the references in hindsight.

For example, "Under 35 U.S.C. 103 where the examiner has relied on the teachings of several references, the test is whether or not the references viewed individually and collectively would have suggested the claimed invention to the person possessing ordinary skill in the art. It is to be noted, however, that citing references which ***merely indicated that isolated elements and/or features recited in the claims are known is not a sufficient basis for concluding that the combination of claimed elements would have been obvious***. That is to say, there should be something in the prior art or a convincing line of reasoning in the answer suggesting the desirability of combining the references in such a manner as to arrive at the claimed invention... [I]t would not have been obvious to modify [the prior art] ... without using [the patent application's] claims as a guide. It is to be noted that simplicity and hindsight are not proper

criteria for resolving the issue of obviousness." *Ex parte Hiyamizu*, 10 USPQ2d 1393 (BPAI 1988).

Accordingly, for Irribarren and Eso (*e.g.*, just 2 of the 12 different references), the Examiner suggests at page 5 of the Final Office Action the motivation to combine is "to provide quality evaluation of bids according to requirements specified by a requester in complex settings." However, Irribarren does not contemplate complex settings such as heterogeneous products from multiple suppliers with tier-based aggregation or "piece-wise linear supply curves" as outlined in (and required by) Eso. One of ordinary skill in the art, when confronted with Irribarren would not decide what is needed is an economical solution for very complex piece-wise linear supply curves when Irribarren is not intended to operate in that setting nor even be operable, since, *e.g.*, the disparity between prices (*e.g.*, ask price – bid price) for some products is likely to be negative. Conversely, an artisan of ordinary skill, when confronted with Eso's economical approximations for bids does not contemplate unmet demand. Rather, Eso is a solution for what the buyer should buy, not what suppliers had available after a bidding cycle. Hence, Eso would not create any reason or need to look to Irribarren.

For at least the foregoing reasons, the Examiner has failed to provide a *prima facie* case for obviousness, and this rejection with respect to independent claims 1 and 8 as well as all associated dependent claims should be reversed.

B. <u>Rejection of Claims 4 and 9 Under 35 U.S.C. §103(a)</u>

Claims 4 and 9 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Irribarren in view of Eso, and in further view of Abeshouse. Reversal of this rejection is respectfully requested for at least the following reasons. Abeshouse does not cure the deficiencies associated with the proposed combination of Irribarren and Eso. Moreover, there is no motivation to combine or a reasonable expectation of success for the combination of Abeshouse and Irribarren.

In particular, Abeshouse is directed to providing market opacity in order to protect the identity of the bidding parties and their bids and/or to promote *bone fide* bids in order to gain access to this information. (*See* Abeshouse, paragraphs 0074-0076). In essence, Abeshouse expressly promotes anonymity whereas Irribarren rests upon the principles of emulating face-to-face negotiations. (*See* Irribarren, paragraph 0051). In addition, Irribarren is directed to meeting

unmet demand when an auction fails, but when price points are close, whereas Abeshouse does not contemplate auctions failing at all, much less by small margins. In fact, by automatically creating a new bidding cycle, Irribarren creates less of an incentive to bid aggressively, whereas Abeshouse is expressly founded on the notion of creating an incentive to bid aggressively. Thus, the combination of these two references would be inoperable and/or would undermine the object of one or both of the disclosures. Accordingly, when presented with one of Abeshouse or Irribarren, one of ordinary skill in the art would not be motivated to look to the other in order to combine the references. Hence, this rejection should be reversed.

C. Rejection of Claim 7 Under 35 U.S.C. §103(a)

Claim 7 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Irribarren in view of Eso and further in view of Muftic. Reversal of this rejection is respectfully requested for at least the following reasons. Muftic does not remedy the deficiencies with respect to the proposed combination of Irribarren and Eso as applied to independent claim 1.

In particular, claim 7 depends from independent claim 1, which is believed to be allowable. Muftic, which relates generally to secure Internet commerce (*see* Abstract), and specifically to transacting an auction by means of a BBS or a chat room (see Fig. 23), does not remedy the aforementioned defects. Accordingly, this rejection should be reversed

D. Rejection of Claims 10 and 42 Under 35 U.S.C. §103(a)

Claims 10 and 42 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Irribarren in view of Eso and further in view of Gellman. Reversal of this rejection is respectfully requested for at least the following reasons. Gellman does not make up for the shortcomings of the proposed combination of Irribarren and Eso. In particular, Gellman, which relates to a value discovery mechanism for various classes of consumers does not overcome the deficiencies with respect to Irribarren and Eso. Accordingly, this rejection should be reversed.

E. Rejection of Claims 12 Under 35 U.S.C. §103(a)

Claim 12 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Irribarren in view of Eso and further in view of Lee. Reversal of this rejection is requested for at least the

following reasons. Lee is insufficient to remedy the improper combination of Irribarren and Eso. Moreover, claim 12 recites, "*a buyer specifies the period of time in which bids must **be received***" whereas Lee teaches at the indicated portions that a buyer specifies the period of time in which the RFQ are to ***be posted***. Specifying a period of time in which bids must be received is materially distinct from specifying a period of time in which RFQs are to be posted (*e.g.*, a duration in which bids must be received is different from a duration in which those bids, once received, will be posted). Accordingly, applicant's representative respectfully requests this rejection be reversed.

F. Rejection of Claims 14 Under 35 U.S.C. §103(a)

Claim 14 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Irribarren in view of Eso and further in view of Hao. This rejection should be reversed for at least the following reasons. Hao does not remedy the impermissible combination of Irribarren and Eso with respect to independent claim 8 from which claim 14 depends. Accordingly, this rejection should be reversed.

G. Rejection of Claims 15 and 16 Under 35 U.S.C. §103(a)

Claims 15 and 16 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Irribarren in view of Eso and further in view of Ginsberg. Reversal of this rejection is respectfully requested for at least the following reasons. The improper combination of Irribarren and Eso is not overcome by Ginsberg, which relates to redistributing excess profits obtained from a sale of an item at artificially high prices. (*See* paragraphs 0006, 00041). Moreover, there is no motivation to combine Ginsberg with Irribarren or a combination of Irribarren and Eso, as Irribarren seeks to address unmet demand for auctions that *do not succeed*, whereas Ginsberg seeks to reallocate excess profits for transactions that *have improperly succeeded* – goals that are virtually direct opposites for each feature.

For example, Ginsberg is based upon public exchange trading where price points are set by the market (*e.g.*, supply *vs.* demand) whereas Irribarren is directed to auctions where both buyers and sellers define their own price points. A system where participants individually decide price points (Irribarren) is not conducive to a model that unilaterally determines a fair price (*e.g.*, the market average) and redistributes some of the excess profits to certain market participants

(Ginsberg). That is, a participant in Irribarren may be purposely bidding outside some hypothetical market average because a buy or sell transaction only has utility at the solicited price. Yet the combination of Ginsberg would destroy this feature of auctions even if the auction had the requisite liquidity to establish an average price as is the case with commodity exchanges. Thus, the combination of these references would be inoperable and/or would undermine their stated objectives.

In addition, there is no motivation to combine Ginsberg with Eso or a combination that includes Eso because, as described *supra*, Ginsberg relates to exchange trading of a single, discrete commodity, whereas Eso relates to auctions for heterogeneous products. These two types of trading are materially distinct in that one requires a fungible, well-defined product and price and the other requires arbitrary pricing for several distinct products. Accordingly, this rejection of claims 15 and 16 should be reversed.

H. Rejection of Claim 17 Under 35 U.S.C. §103(a)

Claim 17 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Irribarren in view of Eso and in view of Ginsberg, and further in view of 892W. Reversal of this rejection is respectfully requested for at least the following reasons. The improper combination of Irribarren, Eso, and Ginsberg is not surmounted by 892W, which relates to price match guarantees (PGMs). In addition, there is further no motivation to combine 892W with either Irribarren, Eso, or a combination of Irribarren and Eso since neither Irribarren nor Eso are directed to retail outlet stores (as is 892W), but rather directed to auctions. While retail outlet stores may have an incentive to reduce prices to obtain customer loyalty, there is no such impetus for typical auction participants

In addition, 892W is non-analogous art. 892W is neither reasonably pertinent to the particular problems solved by the claimed subject matter nor in the same field of endeavor. In accordance therewith, this rejection of claim 17 should be reversed.

I. Rejection of Claims 18 and 19 Under 35 U.S.C. §103(a)

Claims 18 and 19 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Irribarren in view of Eso and in view of Ginsberg and in view of 892W, and in further view of 892U. Reversal of this rejection is requested for at least the following reasons. The improper

combination of Irribarren, Eso, Ginsberg, and 892W is not overcome by the introduction of 892U, which relates to a merger between two e-commerce software companies. In addition, there is further no motivation to combine 892U with at least Irribarren or Eso, or a combination of these references for substantially the reasons provided *supra*. Finally, 892U is non-analogous art and is therefore an improper reference. Accordingly, this rejection of claims 18 and 19 should be reversed.

J. Rejection of Claim 20 Under 35 U.S.C. §103(a)

Claim 20 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Irribarren in view of Eso and in view of Ginsberg and in view of 892W, and in further view of 892V. It is requested that this rejection be reversed for at least the following reasons. The application of 892V does not remedy the shortcomings in connection with the combinations of Irribarren, Eso, Ginsberg, and 892W. Moreover, 892V is not permissibly combinable with any of Irribarren, Eso, or the combination of Irribarren and Eso for substantially the reasons detailed above. Accordingly, this rejection of claim 20 should be reversed.

K. Rejection of Claims 38 and 39 Under 35 U.S.C. §103(a)

Claims 38 and 39 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Irribarren in view of Eso and in further view of Cao. Reversal of this rejection is requested for at least the following reasons. The improper combination of Irribarren and Eso is not overcome by Cao, which relates to examining historical bids to determine a probability of winning a current bid. Accordingly, this rejection of claims 38 and 39 should be reversed.

CONCLUSION

The present application is believed to be in condition for allowance in view of the above comments and amendments. A prompt action to such end is earnestly solicited.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063 [GEDP111USA].

Should the Examiner believe a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact applicant's undersigned representative at the telephone number below.

Respectfully submitted,
AMIN, TUROCY & CALVIN, LLP

/David W. Grillo/
David W. Grillo
Reg. No. 52,970

AMIN, TUROCY & CALVIN, LLP
24TH Floor, National City Center
1900 E. 9TH Street
Cleveland, Ohio 44114
Telephone (216) 696-8730
Facsimile (216) 696-8731

VIII. Claims Appendix (37 C.F.R. §41.37(c)(1)(viii))

1. An electronic multiple supplier system for transacting business comprising:

a central connection component that provides a virtual forum to facilitate electronic communication between buyers and suppliers; and

at least one remote computer connected to the central connection component *via* a network, at least one buyer employs the at least one computer to request, retrieve, and accept online bids that include a price curve for a product from bidding suppliers, the price curve specifying a unit price in tiers based on the total volume purchased,

the virtual forum displays in real time current low bids at each tier as the bids are retrieved.

2. The system of claim 1, the central connection component is a server.

3. (Canceled)

4. The system of claim 1, the virtual forum displays a bidding supplier associated with each low bid.

5 The system of claim 1, the virtual forum limits the period during which bids can be accepted.

6. The system of claim 1, the virtual forum is an Internet web page.

7. The system of claim 1, the virtual forum is an Internet chat room.

8. A method of conducting electronic commerce comprising:

requesting an online bid from a plurality of suppliers;

receiving bids from bidding suppliers, each bid specifies a price for which the associated bidding supplier will sell a product at particular price points varying as a function of a quantity of the product;

displaying in real time a lowest price bid at a respective price point as bids are received; and

accepting a bid.

9. The method of claim 8, further comprising displaying the respective bidding supplier associated with the lowest price bid.

10. The method of claim 8, accepting the bid based on the lowest price.

11. The method of claim 8, receiving bids during a limited period of time only.

12. The method of claim 11, a buyer specifies the period of time in which bids must be received.

13. The method of claim 8, a buyer specifies a ship date.

14. The method of claim 8, accepting the bid includes accepting a supplier for a fixed length of time.

15. The method of claim 14 further comprising:

determining the final price paid at the end of a time period;

calculating the average price paid per product; and

providing a rebate when the average price paid is not equal to the final price determined according to the volume of product purchased.

16. The method of claim 15, providing the rebate to the supplier when the average price paid is lower than the final price determined.

17. The method of claim 15, providing the rebate to the buyer when the average price paid is higher than the final price determined.

18. The method of claim 17, providing the rebate comprising not charging product fees until the rebate is recovered.

19. The method of claim 17, providing the rebate comprising reducing a fee with a predetermined price floor established until the rebate is recouped.

20. The method of claim 15, providing the rebate comprising crediting an online account.

21. (Canceled)

22. A method of transacting business electronically comprising:

establishing a dealroom for transacting business among buyers and suppliers;

requesting suppliers of a desired product to complete and submit an online bid form posted in the dealroom;

receiving a completed bid form from at least one supplier; and

accepting a bid.

23. The method of claim 22, wherein the online bid form contains a price schedule specifying cost per unit tiers such that the price paid per unit varies with the total volume purchased.

24. The method of claim 22, further comprising displaying the lowest price bid by particular suppliers at each price tier.

25. The method of claim 22, wherein suppliers must be registered view the posted online bid form.

26. The method of claim 23, wherein the bid form contains further details regarding the bid including one of shipping date, time period of the offer, and total quantity that must be available for purchase.

27. The method of claim 24, wherein the supplier makes changes to details regarding the bid and submits them for a buyer's review.

28. The method of claim 22, wherein accepting a bid comprises accepting the bid of the supplier with the lowest unit price at a particular tier corresponding to the desired quantity to be purchased.

29. A computer readable medium having stored thereon computer executable instructions for

carrying out the method of claim 22.

30. A method for transacting commerce electronically comprising:

establishing an electronic forum for conducting business transactions;

sending requests to registered suppliers of the forum to sign on and complete an electronic bid form which includes a price curve indicating prices the supplier is willing to sell products at for particular volumes purchased;

receiving at least one bid from a multitude of suppliers;

accepting a bid from a supplier to supply goods for a specific period of time;

placing at least one order for a particular quantity of product;

paying for the products as they are received;

determining the appropriate volume price per unit of product according to the price curve and the total volume purchased;

calculating the average price paid per unit; and

rebating any overage paid corresponding to the difference between the volume price per unit and the average price paid per unit.

31. The method of claim 28, wherein rebating an overage corresponds to crediting an online account.

32. The method of claim 28, wherein rebating an overage corresponds to not charging for additional product ordered until the overage is recovered.

33. The method of claim 28, wherein the rebating an overage corresponds to reducing the price for per unit of additional product ordered until the overage is recouped.

34. The system of claim 1, the virtual forum further comprises a bid modification component that updates the price curve associated with a bidding supplier in real time.

35. The system of claim 1, the virtual forum is configured to display in real time current best bids at each tier.

36. The system of claim 35, a best bid is based upon a price and another criterion.

37. The system of claim 1, further comprising a population component that automatically populates the price curve for a product.

38. The system of claim 37, the population component populates the price curve with data corresponding to a previously submitted bid.

39. The system of claim 38, the previously submitted bid was a winning bid.

40. The method of claim 8, the bidding suppliers are a subset of the plurality of suppliers.

41. The method of claim 8, further comprising receiving updated bids from at least one of the bidding suppliers.

42. The method of claim 8, accepting the bid based on the lowest price and at least one other criterion.

IX. Evidence Appendix (37 C.F.R. §41.37(c)(1)(ix))

None.

X. Related Proceedings Appendix (37 C.F.R. §41.37(c)(1)(x))

None.